

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

STUDENTS FOR FAIR ADMISSIONS,
INC.,

Plaintiff-Appellant

v.

UNIVERSITY OF NORTH CAROLINA,
ET AL.,

Defendants-Appellees.

No. 21-2263

**DEFENDANTS-APPELLEES' RESPONSE
TO MOTION TO SUSPEND BRIEFING**

Plaintiff Students for Fair Admissions' motion to suspend briefing should be denied. The University defendants show the following in support:

1. The district court issued its decision in favor of the University on October 18, 2021 on the two counts adjudicated at trial, Counts I and II. *Students for Fair Admissions Inc. v. University of North Carolina*, No. 14-cv-954 (M.D.N.C. Oct. 18, 2021) (Docket 254).
2. The district court entered judgment on November 4, 2021. *Students for Fair Admissions Inc.*, No. 14-cv-954 (M.D.N.C. Nov. 4, 2021) (Docket 257).

3. Two days later, on November 6, SFFA filed a notice of appeal. Notice of Appeal, *Students for Fair Admissions Inc.*, No. 14-cv-954 (M.D.N.C. Nov. 6, 2021) (Docket 258).

4. This Court docketed the appeal on November 10. Docket 1.

5. The next day, on November 11, SFFA filed in the Supreme Court a petition for a writ of certiorari before judgment and an accompanying motion to expedite briefing of the petition. Pet. for Cert., *Students for Fair Admissions Inc. v. University of North Carolina*, No. 21-707 (S. Ct.). The University defendants' response to the petition is due on December 20.

6. On November 29, this Court entered the briefing order for this appeal. Docket 24.

7. SFFA's opening brief is currently due on January 10, 2022. Docket 24.

8. On December 1, SFFA moved to suspend briefing in this case pending resolution of SFFA's petition for certiorari. Docket 27.

9. The University defendants request that the motion to suspend be denied so that this appeal can move forward without delay. SFFA itself has advocated for the "expeditious[]" resolution of this case.

Mot. to Expedite at 3, *Students for Fair Admissions Inc.*, No. 21-707 (S. Ct.).

10. Counsel for SFFA cites no scheduling conflicts that would preclude SFFA from preparing its brief according to the briefing schedule.

11. It is true that the record on appeal in this case is extensive, *see* Mot. ¶ 14, but that fact alone does not justify suspending the briefing schedule. Because SFFA's appellate counsel was also its trial counsel, SFFA can reasonably prepare its opening brief without the benefit of a delay.

12. SFFA's contention that suspending briefing in this appeal would "conserve party and judicial resources," Mot. ¶ 13, is contingent upon the Supreme Court's granting its petition for certiorari before judgment. Such grants are "extremely rare." *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 n.* (1976) (Rehnquist, J., in chambers). Should the Supreme Court deny SFFA's petition, a suspension would have only served to delay resolution of this appeal.

For the foregoing reasons, the University defendants request that this Court deny SFFA's motion to suspend briefing. However, the

University defendants have informed counsel for SFFA that they would not oppose a 30-day extension of SFFA's deadline to file its opening brief, should it choose to seek one in the ordinary course.

Respectfully submitted, this the 13th day of December 2021.

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CERTIFICATE OF COMPLIANCE

I certify that this response complies with Federal Rule of Appellate Procedure 27(d) because it has been prepared in Century Schoolbook 14-point font using Microsoft Word. I further certify that it complies with Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 477 words.

Respectfully submitted, this the 13th day of December 2021.

/s/ Ryan Y. Park
Ryan Y. Park

CERTIFICATE OF SERVICE

I certify that on December 13th, 2021, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Respectfully submitted, this the 13th day of December 2021.

/s/ Ryan Y. Park
Ryan Y. Park